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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,762	09/29/2005	Edgar Ivo Maria Van Der Heijden	903-132 PC'D/US	4519
23869 7590 10/13/2010 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
SMITH, PRESTON				
ART UNIT		PAPER NUMBER		
1782				
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10/13/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/531,762

Applicant(s)VAN DER HEIJDEN, EDGAR IVO
MARIA**Examiner**

PRESTON SMITH

Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2010.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
4a) Of the above claim(s) 16-28 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-15, 29-32 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5, 12-13-15,31-32 rejected under 35 U.S.C. 103(a) as being unpatentable over Peter C Hildebrand, US-Patent 4,279,938 in view of Edward Schwab, US-Patent 5,342,635.

Regarding claims 1-5, 12, 15, 31, Hildebrand teaches injecting foam into a beverage inside of a glass in order to create a foam head on the beverage (see abstract and Fig 3. The device of Fig 3 meets the limitations of claim 5). Some of the foam that is injected would naturally float to the surface of the beverage since foam has a lower

density than liquids. The injector is in the form of a pump and contains liquid and gas inside of it. The injector would provide both the liquid-foam pump and the air pump since air and liquid inside of the injector would be forced out by the pump feature. The injection mechanism would function as a "push button". The foam is considered to be for human consumption. The device would be used in the manner of claim 15. The foam is preferably of that or derived from the beverage (column 2, lines 26-27). It is unclear if the foam is different than the base liquid however.

Referring to the foam being different than the beverage liquid, Schwab teaches that edible foams are well known in the art to contain syrup (column 4, line 53). It would have been obvious to add syrup to the foam of Hildebrand in order to make it tastier. This can be done by adding the syrup into the syringe separately and then mixing the foam and syrup inside of the syringe or mixing the foam and syrup outside the syringe and then adding it to the syringe. This addition of ingredients would make the foam different from the base liquid.

Regarding claim 13, the positioning of the device in Fig 3 appears to meet the claim limitation.

Regarding claim 14, 32, the reference teaches the invention of claim 1 however the reference fails to teach the liquid containing portion of the syringe being of a cardboard container. Cardboard containers (carton) with dispensing means are well known (such as milk cartons or juice boxes with a straw). The liquid is stored in the

cardboard box and dispensed through the straw of the juice box) and thus one of ordinary skill would have found it obvious to modify the liquid containing portion and make it cardboard since cardboard containers are relatively cheap and this would provide for a means to process and create cheap dispensing injectors.

Claims 6-9,30 rejected under 35 U.S.C. 103(a) as being unpatentable over Peter C Hildebrand, US-Patent 4,279,938 in view of Stephen Cornell, US-Patent 5,848,721 and Edward Schwab, US-Patent 5,342,635.

Regarding claims 6-9,30, Hildebrand teaches the invention of claim 5 however Hildebrand fails to teach the dispensing tube (the "needle" portion of the syringe or injector) being of a flexible design.

Cornell teaches a container containing liquid wherein the container has two drinking straws that can be used for dispensing liquids (see Fig 2, number 44. The tube or straw has a concertina like constriction, having two rigid parts connected by a flexible part, and being flexible and variable by length). It would have been obvious to combine this feature with Hildebrand and modify the dispensing line of Hildebrand to incorporate the structure of flexible straw of Cornell in order to make the line of Hildebrand less susceptible to breaking and easier to move around in the solution to dispense the foam. Additionally, one of ordinary skill would have recognized the function of a straw and the function of a syringe would be to transport a liquid from one location to another and thus

it would have been obvious to interchange one for the other to perform the same task or function.

Claims 10-11 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Peter C Hildebrand, US-Patent 4,279,938 in view of Micheal J. Simmons, US-patent 4,148,417 and Edward Schwab, US-Patent 5,342,635.

Regarding claims 10-11, the reference teaches the invention of claim 5 however the reference fails to teach a nozzle attached to the end of the dispensing line.

Simmons teaches that nozzles attached to "dispensers" are well known in the art (see Fig 1 and 2). It would have been obvious to modify the end of Hildebrand and make it of a nozzle construction such as Simmons in order to more carefully regulate the foam dispensing and cover the end of Hildebrand. Additionally, nozzles with multiple openings inside are well known (such as a mesh filter on a faucet tap) and thus it would have been obvious to modify the composite invention to include a nozzle with multiple openings in order to provide for the dispersion of a finer foam product.

Regarding claim 28, the line does not have a plurality of dispensing lines however Simmons teaches a container with "two lines" (the nozzles are considered to be lines (see Fig 2). It would have been obvious to modify the dispenser of Hildebrand to include this feature in order to allow for more efficient dispensing of foam (more surface area would be covered).

Claims 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Peter C Hildebrand, US-Patent 4,279,938 in view of Edward Schwab, US-Patent 5,342,635, Edward Schwab, US-Patent 5,342,635, and John Kepplinger, US-PG Pub 2002/0192345.

Regarding claim 29, the references teach the invention of claim 4 and in particular, Schwab teaches syrup as discussed previously however it is unclear if this is fruit syrup.

Kepplinger teaches that it is well known to create aerated foods (similar to foams) from fruit concentrates (abstract). It would have been obvious to add fruit concentrates (syrup) to the foam of Hildebrand since this would make it tastier and add nutrition to it (Schwab discloses purees column 3, line 4 which wouldn't incorporate into the foam as easily as a syrup would).

Response to Arguments

Applicant's arguments filed 07/27/2010 have been fully considered but they are not persuasive.

Applicant argues on the last paragraph of page 10 that the syringe chamber of Hildebrand cannot be regarded as a reservoir for the foam liquid before formation of the foam since the foam is created when the stout is drawn from the glass into the syringe

chamber, and thus the foam is already created when the stout enters the syringe chamber. In the embodiment that applicant describes, foam is still present in the syringe at one point and is injected into the beverage so the syringe still functions as a foam holding device (stout and foam are injected into the glass column 5, lines 55-65). Additionally, applicant argues that the dispensing device does not comprise a separate air pump. The injector is in the form of a pump and contains liquid and gas inside of it. The injector would provide both the liquid-foam pump and the air pump since air and liquid inside of the injector would be forced out by the pump feature.

Applicant argues on page 11, third paragraph that Hildebrand does not disclose a dispensing mouth which is directed downwards at one side of the reservoir in such a manner that a glass can be placed next to the reservoir and foam can flow inside of the glass from above. Fig 3 of Hildebrand appears to meet this limitation. The syringe is "next to" the glass. It appears that applicant intends to claim that the reservoir is positioned parallel to the glass or something to this effect.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRESTON SMITH whose telephone number is (571)270-7084. The examiner can normally be reached on Mon-Th 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1782

prs